

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 26**

**INDUSTRIAL GALVANIZERS SOUTHEAST, INC. <sup>1/</sup>  
Employer**

**Case No. 26-RC-8255  
(formerly 12-RC-8633) <sup>2/</sup>**

**LOCAL UNION NO. 698 OF THE INTERNATIONAL  
ASSOCIATION OF BRIDGE, STRUCTURAL,  
ORNAMENTAL AND REINFORCING IRON WORKERS  
Petitioner**

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record in this proceeding, the undersigned finds: <sup>3/</sup>

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The parties stipulated that Industrial Galvanizers Southeast, Inc., hereinafter referred to as the Employer, is a Delaware corporation with an office and place of business located in Miami, Florida, where it is engaged in the business of galvanizing steel. During the past 12 months, a representative period, the Employer purchased and received goods and materials valued in excess of \$50,000 directly from suppliers located outside the State of Florida. Accordingly, I find the Employer is engaged in

commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The Petitioner, who I find to be a labor organization within the meaning of Section 2(5) of the Act, claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c) (1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act: <sup>4/</sup>

Included: All full-time and regular part-time riggers, kettlemen, dressers, picklers and shipping and receiving employees, excluding leadmen, employed by the Employer at its Miami, Florida facility.

Excluded: All office clerical employees, customer service clerks, customer service coordinator, guards and supervisors as defined in the Act.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Local Union No. 698 of the International Association of Bridge, Structural, Ornamental and Reinforcing Ironworkers.

## **ELECTION NOTICES**

Your attention is directed to Section 102.30 of the Board's Rules and Regulations, which provides that the Employer must post the Board's official Notice of Election at least three (3) full working days before the day of the election, excluding Saturdays, Sundays, and holidays and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed.

## **LIST OF VOTERS**

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB. v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director for Region 12 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. Region 12 shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the Regional Office, Tampa, Florida on or before May 25, 2001. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission. Since the list is to be made available to all parties to the election, please furnish a total of **2** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. To speed preliminary checking and the voting process itself, the names should be alphabetized (overall or by department, etc.). If you have any questions, please contact the Tampa Regional Office.

## **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by June 1, 2001.

DATED at Memphis, Tennessee, this 18<sup>th</sup> day of May, 2001

/s/

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Ronald K. Hooks, Director, Region 26  
National Labor Relations Board

- 1/ The Employer's name appears as amended at the hearing.
- 2/ The Acting General Counsel issued an Order Transferring Case from Region 12 to Region 26. Pursuant to said Order, to the extent that further proceedings are appropriate to effectuate this Decision, this case will automatically transfer back to Region 12 and will continue as 12-RC-8633, except that Region 26 will retain jurisdiction only with respect to pre-election issues relating to the substance of this Decision.
- 3/ The Employer and the Petitioner filed timely briefs, which have been duly considered.
- 4/ The Petitioner seeks to represent all full-time and part-time production and maintenance employees, including riggers, kettlemen, picklers, dressers and shipping and receiving employees, employed by the Employer at its Miami, Florida facility. The Petitioner seeks to exclude the leadmen as supervisors within the meaning of Section 2(11) of the Act. The Employer asserts the unit must also include 2 of the 4 leadmen, receivable clerk, payable clerk, office administrative clerk, customer service coordinator and customer service clerks.

## **FACTS**

The Employer's Miami facility has been open for less than two years. The Employer is a "hot dip galvanizing company", which means it galvanizes steel for corrosion protection. There are five departments: rigging, kettle, dressing, shipping and receiving and customer service. The Employer employs 32 individuals, which includes all supervisors and clerical employees. The top two officials of the Employer are Javier de la Vega, general manager, and Gilbert Medina, operations manager. The parties stipulated that de la Vega, Medina and Freddie Naverrette, leadman in the kettle

department, are supervisors within the meaning of Section 2(11) of the Act and possess the authority to hire, fire, layoff or evaluate employees or effectively recommend such. In the Employer's post-hearing brief, it conceded that leadman Carlos Del Rio was a statutory supervisor. Thus, the Employer asserts the unit's size is 28. The Petitioner seeks a unit of 20 employees: 7 riggers, 7 dressers, 3 kettlemen, 2 shipping/receiving and 1 pickler.

The Employer's customers are steel distributors and providers, who deliver their products as "black steel" to the Employer. After delivery of the "black steel" products, which weigh between five ounces and 18,000 pounds, shipping and receiving employees put the steel in a row in the yard. (Each row is for a day of the week.) Also, after delivery of the product, the customer is given a purchase order by one of the two customer service clerks, Maria Whitty<sup>1</sup> or Jackie Nunez, and Nunez codes the purchase order and enters the information into the computer. The purchase order information is also written on the bulletin board in the customer service department either by one of the clerks; Gilbert Garcia, leadman of shipping and receiving/customer service; general manager de la Vega; or operations manager Medina. The shipping and receiving employees, Wayne Gonzalez and Luis Betancourt, verify the count of the product and place a metal tag on the steel.

The next step in the process is for the riggers to drive forklifts to the particular row and take the products back to the rigging department. At that time, the riggers, including leadman Carlos Del Rio, determine which rigging system, racking, bow or chain, to use. After the steel is rigged, it is taken through five steps: caustic bath -- where soil and paint are removed; caustic rinse; acid bath; acid rinse; and preflux tank.

The pickler, an employee in the rigging department, removes the steel from the caustic rinse through the remainder of the steps.

Kettlemen, from the kettle department, remove the steel from the preflux tank and place it into a molten bath of zinc, heated to 830 degrees. Thereafter, the steel is removed and placed into the quench tank to cool it down. The leadman in the kettle department is Freddie Navarette, a stipulated supervisor.

The steel is removed from the quench tank by dressers from the dressing department, who then cut it from its rigging and cut off the excessive zinc (dress the product). Thereafter, the steel is packaged in either a drum or pallet and/or strapped together with wire. The dressers or shipping and receiving employees move the steel to the yard for pickup or shipment to the customer. The leadman of the dressing department is Francisco (Pancho) Gamio.

All of the employees, including leadmen, customer service clerks and office clerks, are hourly paid and punch a timeclock, except the customer service coordinator, Nancy de la Vega<sup>2</sup>, who is paid an undisclosed salary. All employees receive the same fringe benefits, health insurance and a 401(k) plan.

The plant employees (riggers, dressers, kettlemen, pickler and shipping/receiving), including leadmen, wear uniforms<sup>3</sup> while the clerical employees (customer service clerks and coordinator, office administrative, receivable and payable clerks) do not wear uniforms. The plant employees also wear safety equipment, hard hats, safety goggles and steel-toed shoes while the clerical employees do not do so in

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<sup>1</sup> In 2000, Whitty transferred from the dressing department to customer service.

<sup>2</sup> Nancy de la Vega is married to the cousin of Javier de la Vega, the general manager.

the office area. Usually, the clerical employees wear hard hats and safety goggles when they enter a production area. The clerical employees have their own parking area entitled "office parking" while the plant employees park in a different area, closer to their workstations.<sup>4</sup> The clerical employees use a different entrance than the plant employees, specifically an entrance into the air-conditioned office facilities instead of one of several entrances into the plant. The plant employees take their lunch break between 11:45 a.m. and 12:15 p.m. in the employee breakroom while the clerical employees take their lunch break at a different time in the employee breakroom. The plant and clerical employees have separate bathroom facilities.

The clerical employees work a variety of hours. The customer service clerks, Whitty and Nunez, work from 8:00 a.m. to 4:30 p.m. and 7:00 a.m. to 3:30 p.m., respectively. Ms. de la Vega works from 8:00 a.m. to 5:00 p.m., which is also the same hours as Sussana Castillo, payable clerk. Maribel Alvarez, the office administrative clerk, and Nikki Tamayo, the receivable clerk, are part-time and their hours vary. The plant employees' hours are from 5:30 a.m. to 4:00 p.m. for the rigging department and 6:00 a.m. to 4:30 p.m. for the kettle, shipping/receiving and dressing departments. The plant employees work on Saturdays on a regular basis while the office employees only work Monday through Friday.

The plant employees are paid as follows: riggers, shipping/receiving employees and dressers -- \$7.60 an hour and kettlemen and pickler -- \$8.60. The leadman for each department is paid an additional \$3.00 an hour. The Employer asserts it pays the

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<sup>3</sup> Occasionally, a plant employee will wear a t-shirt instead of a uniform shirt and kettlemen wear protective overalls. The record evidence, including the testimony of the leadmen, established that plant employees are required to wear uniforms.

additional \$3.00 an hour to leadmen for their administrative work, which is about one hour a day.. The clerical employees are paid as follows: customer service clerks -- \$7.60 to \$8.60 an hour; receivable clerk -- \$10.50; payable clerk -- \$11.60; and office administrative clerk -- \$12.50.

The payable, receivable and office administrative clerks perform a variety of functions from their area in the front of the office complex. The payable clerk, Castillo, orders supplies, contacts the uniform service, when necessary, and sometimes performs orientation for new employees. The receivable clerk, Tamayo, rectifies the daily receivable sheet, produces the daily production reports for billing, checks with customers concerning their satisfaction with the employer's service and handles some human resource issues. The record evidence does not show that either Castillo or Tamayo has ever left the office area to perform work in a production area or yard. The office administrative clerk, Alvarez, is in charge of new employee orientation and insurance, handles a variety of human resources paperwork as well as counts raw materials -- zinc on a daily basis and wire once a week. The counting of the raw materials is the only time that Alvarez is in a production area and during this time, she does not have any contact with plant employees.

The customer service coordinator, Ms. de la Vega, performs the following job functions: bills customers, completes reports and other paperwork, researches invoices, handles customer complaints, provides quotes to prospective customers, gives potential and new customers a tour of the plant, checks daily on the progress of orders for new clients by going out in the plant and speaking with the leadmen, sometimes checks on

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<sup>4</sup> Although the evidence was inconclusive as to whether there was a policy against plant employees using "office parking", the record evidence clearly established "office parking" was only utilized by clerical



discrepancies in the weight of the products and sometimes counts the products. In determining the discrepancy in the weight of a product, Ms. de la Vega speaks with the customer service clerks as well as Gamio, the lead man in the dressing department. These discrepancies occur every 1 to 2 weeks.

The customer service clerks, Whitty and Nunez, work inside the office complex. Their offices overlook the dressing department, which is the first department in the plant production area. They perform a variety of duties, including greeting customers, stamping orders, generating sales orders, posting information on the bulletin boards, and calling customers to request pickup or delivery of their products. As for any additional duties performed by Whitty and Nunez, the witnesses' testimony varied. Neither Whitty nor Nunez testified in the hearing. Leadman Gamio testified he spoke to Whitty 30 to 40 times a day in her office and another three or four times a day when Whitty came into the production area and spoke to him at his desk. Gamio's desk is near the door between the customer service office and the dressing department. De la Vega stated Whitty spoke to leadman Gamio about various matters and also referred to Whitty speaking to employees (which the Employer asserted at the hearing included the leadmen) 4 to 15 times a day about the status of an order. The record is unclear as to whether Whitty's conversations with employees were with unit employees or leadmen, whom I find are statutory supervisors, *infra*. Medina said Whitty was in the dressing department 10 to 15 times a day speaking to Gamio.

The Petitioner presented testimony of four employees or former employees. Enrique Rivero testified that when he worked in the dressing department he saw Whitty speaking to Gamio once a day for about five minutes. Previously, when he worked in

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employees.

the kettle department, Rivero said he did not see Whitty in any production area. Jorge Ferrer and Amaury Ferrer testified they saw Whitty at the door speaking to Gamio, who was at his desk. Gerardo Martinez testified he once saw Whitty speaking to Gamio but he had never have a conversation with Whitty in his one and one-half years in the dressing and rigging departments.

The Employer's witnesses, de la Vega, Gamio and Del Rio, testified Nunez is in charge of certifying the "mil" length of the zinc with a device called a micrometer. Del Rio said she performs this duty once or twice a day while Gamio said it was two to three times a day. Neither stated how long the task took. In certifying the level of zinc, they said Nunez does not require the assistance of any plant employees although she is in the area of plant employees. Before the hiring of Nunez several months ago, Whitty performed this duty. Amaury Ferrer testified he saw Nunez about twice a week in the yard speaking to shipping and received employees for about 45 seconds at a time. Rivero stated he once saw Nunez speaking to leadman Garcia for about ten minutes. Martinez and Jorge Ferrer testified they had never seen Nunez in any production area.

As previously stated, there are four leadmen, Naverette -- kettle department; Del Rio -- rigging; Gamio -- dressing; and Garcia -- shipping and receiving/customer service. The Employer stipulated to Naverette's supervisory status and conceded Del Rio's supervisory status in their brief. The record evidence reflects each of the leadmen performs physical labor in a similar manner as employees in the respective departments. Each of the leadmen earns \$3.00 an hour more than employees in their respective departments. Leadmen Del Rio and Garcia carry a two-way radio. Navarette and Gamio do not because their departments are near the office where they are easily

accessible. De la Vega, Medina, customer service and the front office also possess two-way radios. Del Rio, Gamio and Naverette received a month of training at the Employer's Tampa facility before the Miami facility opened in 1999. All of the leadmen possess keys to the Miami facility and are in charge of locking and unlocking the facility on a daily basis.

According to de la Vega, the leadmen Gamio and Garcia do not have the authority to hire, fire, discipline, promote, transfer, reward, or layoff/recall employees nor effectively recommend such actions. Gamio testified he did not possess the authority to take any of the above actions but did not testify about whether he could effectively recommend such. Furthermore, de la Vega testified the leadman do not have the authority to assign work, rather they act as conduits for information from Medina and himself. Moreover, de la Vega and Medina testified leadmen do not have the authority to approve overtime, personal leave or a day off. Del Rio and Gamio corroborated this testimony

The Petitioner presented testimony and exhibits, which disputed the leadmen's lack of supervisory authority. A warning was issued to employee Gerardo Martinez on April 10, 2001. The warning (Petitioner's Exhibit 5) is signed by Del Rio as the "signature of supervisor issued warning". Martinez testified Del Rio issued the warning to him and stated, "either sign it or get fired". According to Martinez, Del Rio frequently told him, "do it or I'll fire you" and similar threats. Del Rio also signed, as the "supervisor who issued warning", for a warning issued to Jesus Garcia on December 29, 2000. The warning states Del Rio previously issued an oral warning to Garcia. Amaury Ferrer

testified Del Rio discharged employee Chucho (last name unknown) by taking him to the office and thereafter the employee did not return to work.

Gamio testified he issued verbal warnings to employees Enrique Rivero and Jorge Ferrer for coming to work drunk although he allowed them to remain at work. On a second occasion, Gamio testified Rivero arrived at work drunk, that he told him, "this was the last time" and took him to the office, where he told Medina that he would not work with Rivero that day. Jorge Ferrer testified on April 4, 2001, he told Gamio that he would not work in the kettle department that day. In response, Gamio took Ferrer to the office and told Medina, "he didn't have a job for me there, that he didn't want me there". Thereafter, according to Ferrer, Medina discharged him. Gamio testified he reported Ferrer's misconduct to the office. Medina did not testify about this matter.

The record evidence reflects Gamio was involved in the discharge of employee Roy Campbell in August 2000. According to Rivero, Gamio told manager Denver Dyer that he would not work with Campbell anymore. Gamio testified Campbell insulted him and he informed Dyer that he did not need Campbell in the dressing department any longer. Thereafter, Campbell was discharged for being insubordinate to Gamio and Dyer.

The record evidence reflects lead man Garcia is in charge of the plant on Saturdays when the plant employees work overtime. The evidence also establishes Garcia can contact de la Vega or Medina if any problems occur. Rivero testified if employees need to leave the plant on Saturday, they request permission from Garcia.

According to de la Vega, management meetings consist of himself and Medina. But, Gamio testified he attends regular meetings with de la Vega and Medina as well as

the other three leadmen, where they discuss work-related issues. Petitioner's witnesses Amaury Ferrer, Enrique Rivero and Jorge Ferrer testified to their leadmen attending regular meetings with de la Vega and Medina.

De la Vega stated he has never informed employees that the leadmen are their bosses nor referred to them as supervisors. Gamio denied ever referring to himself as a supervisor. But, a document and several of the Petitioner's witnesses disputed these assertions. In a memorandum, dated January 18, 2001 from Medina to all employees, it states:

If you cannot show up to your workplace for any reason at all, you have to let your manager know previously. If you have a situation that arises out of work or out of the office hours, not within the office schedule, you must call and leave a message. There will be an answering machine and you can leave your message there. Immediately the message will be given to **your supervisor**.

If you don't leave a message, then we would consider that as a no call and no attendance. The first time there will be a warning. The second time the consequence will be that you will be terminated. Our phone number is (305) 681-8844. Thank you for your cooperation.

Medina testified he did not know the Spanish word for "lead" so he used the word "supervisor" in the memorandum. The memorandum, Petitioner's Exhibit 4, is in Spanish but was translated by the court interpreter into English. The Employer introduced Employer Exhibit 5, which it stated was the English version of the memorandum. A review of the English version of the memorandum reflects that it is not a full translation of the Spanish version. The English version states:

"If you are not able to go to work for any reason, you must call your manager. If the situation arises before working hours, and there's no one in the office, you must leave a message for the voice mailbox. If you do not leave a message this will be considered a no call -- no show. The first time will result in a warning. The second time will result in termination. Our phone number is (305) 681- 8844. Thank you."

Amaury Ferrer, Rivero and Martinez testified de la Vega and Medina referred to Del Rio as the supervisor of rigging and that they were to speak to him or Naverette about work-related problems and a necessary absence for a medical appointment. Amaury Ferrer also stated Del Rio said he was a supervisor until two days before the representation hearing when he said he was a leadman. Jorge Ferrer testified Gamio stated he was a supervisor. All of the Petitioner's witnesses testified they considered the leadmen to be supervisors.

### **ANALYSIS**

There are two unit issues to resolve: whether the leadmen are statutory supervisors and whether the clerical employees are included in the unit as plant clericals or excluded as office clericals.

The party asserting that individuals are supervisors under the Act bears the burden of proving their supervisory status. **Bennett Industries, Inc.**, 313 NLRB 1363 (1994). Section 2(11) of the Act defines a supervisor as one, who possesses "authority, in the interest of the Employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively recommend such action, if in connection with

the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment." The possession of any one of the indicia specified in Section 2(11) of the Act is sufficient to establish supervisory status, provided that such authority is exercised in the employer's interest, and requires independent judgment in a manner which is more than routine or clerical. **Harborside Healthcare, Inc.**, 330 NLRB No. 191 (2000).

As described above, the leadmen possess the primary indicia of statutory supervisory authority by their disciplining of employees and effectively recommending the discharge of employees. The evidence reflects leadmen have issued written warnings to employees. Specifically, leadman Del Rio issued written warnings to employees Martinez and Garcia. Such findings are based upon the Employer's own documents, which reflect Del Rio issued the warnings. Leadmen have also issued verbal warnings to employees. Specifically, leadman Gamio conceded he issued verbal warnings to employees Rivero and Jorge Ferrer for arriving at work drunk and leadman Del Rio issued a verbal warning to employee Garcia. Leadmen have made effective recommendations for the discharge of employees. Specifically, the record evidence reflects Gamio recommended the discharge of employee Jorge Ferrer when he told Medina, "he didn't have a job for Ferrer there, that he didn't want Ferrer there". Furthermore, Gamio effectively recommended the discharge of employee Campbell by informing manager Dyer that he did not need Campbell in the dressing department any longer. On both occasions, after Gamio's recommendation to management, the employees were discharged. This evidence is consistent with the stipulation that leadman Navarette has the authority to fire employees or effectively recommend such.

Additionally, leadmen Del Rio and Gamio threatened employees Martinez and Rivero, respectively, with discharge.

Besides the above indicia of statutory supervisory status, the leadmen have several secondary indicia of supervisory status. Specifically, leadman are paid \$3.00 an hour more than employees in their respective departments, possess keys to the facility, attend regular meetings with high-level management and have received one month of training at the Employer's Tampa facility. Of course, it is well-established that possession of secondary indicia of supervisory status, without possession of primary indicia, is insufficient to establish supervisory status within the meaning of the Act. See **Hausner Hard-Chrome of KY, Inc.**, 326 NLRB 426 (1998).

In **Superior Bakery, Inc.**, 294 NLRB 256, 261-62 (1989), the Board found a "working foreman" to be a supervisor within the meaning of the Act wherein the individual utilized the following authority: issued written warnings to employees, which were countersigned by higher level supervisors; issued verbal warnings to employees; recommended warnings be issued to employees; responsibly directed employees; the employees considered the foreman to be in charge; and the foreman received higher wages than the other employees. Similarly, the Board found foremen in **Pacific Dry Dock & Repair Company.**, 303 NLRB 569, 576 (1991), to be statutory supervisors where they attended production meetings with high-level management, effectively recommended the discharge of employees, assigned work, enforced safety standards, interviewed job applicants, and were paid an additional \$1.00 an hour more than other employees. In **Biewer Wisconsin Sawmill, Inc.**, 312 NLRB 506, 507 (1993), the Board found an individual to be a statutory supervisor wherein on one occasion he



threatened to discharge an employee "if the boiler lost pressure again". Also see **K.B.I. Security Services, Inc.**, 318 NLRB 268, 269 (1995), where the Board found supervisory status based on the individual's authority to orally warn employees and effectively recommend more severe discipline. The Employer cites to several cases, **Millard Refrigerated Services, Inc.**, 326 NLRB 1437 (1998), **S.D.I. Operating Partners, L.P.**, 321 NLRB 111 (1996), **First Western Building Services, Inc.**, 309 NLRB 591, 601 (1992), and **D.V. Copying & Printing, Inc.**, 240 NLRB 1276, 1281-1282 (1979), where the Board failed to find supervisory status based upon the leadmen giving assignments and directions to employees. As stated above, the leadmen's supervisory status in the case at bar is not based upon their assignment of work.

The Employer argues that evidence of the supervisory status of leadmen Del Rio and Navarette should not be used to determine the supervisory status of leadmen Gamio and Garcia. This assertion is misplaced because the record evidence reflects the Employer does not distinguish between the four leadmen. Specifically, each leadman is paid \$3.00 an hour more than the employees in his department, each leadman possesses keys to the facility, each leadman attends management meetings with de la Vega and Medina and the leadmen (except Garcia who was not a leadman at that time) received a month of training at the Tampa facility. Thus, I find the Employer does not distinguish between the leadmen and one leadman's exercise of statutory supervisory authority is evidence of the statutory supervisory authority of all leadmen. This analysis is only applicable to leadman Garcia because the record evidence reflects specific instances of Gamio's utilization of statutory supervisory authority.

Based upon the record evidence, referred to above, and applicable caselaw, I find the leadmen to be supervisors within the meaning of Section 2(11) of the Act.

The second issue is whether the clerical employees must be in the unit found appropriate herein. In making such a determination, it is well-established that a bargaining unit need only be an appropriate unit, not the most appropriate unit. **Morand Bros. Beverage Co.**, 91 NLRB 409 (1950), *enfd.* 190 F. 2d 576 (7th Cir. 1951); **Dezcon, Inc.**, 295 NLRB 109 (1989). In deciding an appropriate unit, the Board applies a community of interest analysis, wherein a number of factors are considered, including the similarity of duties, job qualifications, wages, benefits and working conditions, extent of interaction and interchange, organizational structure, functional integration of the business, history of collective bargaining and the scope of the petitioned-for unit. **Kalamazoo Paper Box Corp.**, 136 NLRB 134 (1962).

In applying the community of interest test, the record evidence reflects the customer service clerks, customer service coordinator, payable clerk, receivable clerk and office administrative clerk have separate and distinct duties and qualifications than the plant employees -- riggers, dressers, kettlemen, pickler and shipping and receiving employees. Specifically, the plant employees perform physical labor in a factory setting while the clerical employees perform mainly clerical functions, producing reports, billing customers, handling human resource matters and dealing with customers, in an air-conditioned office setting.

The customer service clerks, Whitty and Nunez, have limited involvement in production. The record evidence reflects Whitty speaks to leadman Gamio, a statutory supervisor, during the day although the frequency varied from witness to witness.

These conversations occurred at the door between customer service office and the dressing department and at Gamio's desk, by the same door. The record evidence is unclear whether Whitty has any interaction with plant employees. De la Vega was the only witness who stated Whitty had conversations with plant employees but even this testimony is unclear because de la Vega testified leadmen were plant employees. The record evidence supports a finding that Nunez measures the zinc level about twice a day for an unknown period of time.

Concerning the customer service coordinator, Ms. de la Vega, the record evidence reflects she checks daily with the leadmen on the progress of orders but does not have any interaction with plant employees.

With regard to the payable clerk, receivable clerk and office administrative clerk, only the office administrative clerk, Alvarez, has any involvement with production. Specifically, Alvarez inventories the raw materials, zinc once a day and wire once a week.

The organizational structure is also different for all of the clerical employees. As found above, the plant employees report to their leadman while the customer service clerks report to Ms. de la Vega, the customer service coordinator. The record was void of any evidence that the customer service clerks reported to Garcia, the shipping and receiving/customer service leadman. The payable, receivable and office administrative clerks report to Mr. de la Vega.

The working conditions of the clerical employees are different than the plant employees. The clerical employees work in an air-conditioned office on a schedule of Monday through Friday while the plant employees work in the plant and yard Monday

through Friday or Saturday. Furthermore, the plant employees arrive between 5:30 a.m. and 6:00 a.m. and work 10-hour days while the clerical employees report between 7:00 a.m. and 8:00 a.m. and work 8-hour days. Additionally, the clerical employees park in a separate parking area, do not wear uniforms and use different entrances/exits than the plant employees. The plant employees wear uniforms and safety equipment – hard hats, goggles and steel-toed shoes. The customer service clerks, customer service coordinator and office administrative clerk usually wear hard hats and goggles when they enter a production area.

The wages of the office clerks are dissimilar from the wages of plant employees. The office clerks are paid between \$10.50 and \$12.50 an hour while the plant employees are paid between \$7.60 and \$8.60 an hour. The customer service clerks are paid in the same range as the plant employees. The customer service coordinator is a salaried employee.

Based upon the above facts, I find the office clerks -- payable clerk, receivable clerk and office administrative clerk, do not share a sufficient community of interest with the plant employees to require their inclusion in the Unit; thus, I shall exclude them from the bargaining unit. See **PECO Energy Co.**, 322 NLRB 1074, 1085-86 (1997), where the Board found the clerical employees should be excluded from a bargaining unit of craft and technical employees.

The customer service clerks have some factors in common with the plant employees. The wages of the customer service clerks are the same as the plant employees. One customer service clerk, Whitty, permanently transferred from being a dresser, a plant employee. The record is void of evidence of any temporary transfers

between customer service clerks and plant employees. As for any interaction between these employees, the record evidence reflects Whitty has regular daily contact with leadmen Gamio and Del Rio, who I have found to be supervisors within the meaning of the Act, but the record evidence is unclear that she has any interaction with bargaining unit employees. The record evidence does establish Nunez measures the level of zinc about twice a day.

The Board has found customer service clerks do not have a community of interest with production employees in a number of cases. In **Harron Communications, Inc.**, 308 NLRB 62, 63 (1992), the Board found customer service representatives did not share a community of interest with technicians, wherein they had regular contact with unit employees but were separately supervised, had different working conditions, did not wear uniforms (like the unit employees), did not work Saturdays (like the unit employees) and performed a different type of work. Moreover, the Board in **Audiovox Communications Corp.**, 323 NLRB 647, 650-51 (1997), found a unit of technicians was appropriate without the inclusion of the customer service employees wherein the technicians possessed a higher level of training and skills, worked in a distinct area of the plant and were separately supervised but had frequent contact with the customer service employees. Also see **Sears, Roebuck & Co.**, 235 NLRB 678 (1978), where the Board did not include the customer service employees in the bargaining unit.

The Employer's case citations are inapposite to the case *sub judice*. In **S & S Parts Distributors Warehouse, Inc.**, 277 NLRB 1293, 1296 (1985), **John N. Hansen Co., Inc.**, 293 NLRB 63, 65 (1989), **All-American Distributing Co., Inc.**, 221 NLRB 980 (1975), and **Jacob Ash Co., Inc.**, 224 NLRB 74, 75 (1976), the Board found the

customer credit clerk, order clerk or similarly named clerk had a community of interest with the warehouse employees, including customer order employees and order fillers, because each performed the same functions as other bargaining unit employees or integrally participated in the warehouse order flow process, had frequent face-to-face work-related contact with warehouse employees, had some common supervision and had similar terms and conditions of employment.<sup>5</sup> Similarly, in **General Shoe Corp.**, 109 NLRB 618, 621 (1954), the Board found the plant clerk to be a plant clerical and included in the production and maintenance unit where he worked throughout the plant delivering materials to various departments, sometimes assisted in the loading and unloading trucks and maintained inventory from a desk in the lobby of the office.<sup>6</sup> In the case at bar, the customer service clerks and coordinator do not have frequent contact with plant employees, have separate supervision, do not perform physical labor and have dissimilar terms and conditions of employment; thus, the above cases are inapposite.<sup>7</sup>

Based upon the above, I find the customer service clerks and coordinator do not share a sufficient community of interest with the plant employees to mandate their inclusion in the Unit.

The size of the unit found is approximately 20 employees.

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<sup>5</sup> The Employer citation to **Homestake Mining Co.**, 105 NLRB 198, 202 (1953), is also misplaced because the warehouse clerk in the general office performed the same duties as warehouse clerks in other departments and the parties agreed to include them in the bargaining unit. Thus, the general office warehouse clerk was included in the bargaining unit.

<sup>6</sup> In the same case, the Board found the "standards clerks" to be office clerical employees even though they occasionally checked with production employees concerning errors in production records because their duties were predominantly performed in the office away from production employees. *Id.*

<sup>7</sup> Similarly, the Employer's citation to **Hamilton Halter Co.**, 270 NLRB 331(1984), is misplaced because the two clerical employees in question performed loading and unloading of trucks and facilitated the production of products.

In accordance with Section 102.97 of the Board's Rules and Regulations, as amended, all parties are specifically advised that the Region will conduct the election when scheduled even if a Request for Review is filed, unless the Board expressly directs otherwise.

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